

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MERL SIMPSON,

Petitioner,

v.

B.M. TRATE,

Respondent.

No. 1:22-cv-00631-ADA-SAB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING
RESPONDENT'S MOTION TO DISMISS,
DISMISSING PETITION FOR WRIT OF
HABEAS CORPUS, AND DIRECTING
CLERK OF COURT TO CLOSE CASE

(ECF Nos. 7, 11)

Petitioner Merl Simpson ("Petitioner") is a federal prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 30, 2022,¹ the assigned Magistrate Judge issued findings and recommendations, recommending that Respondent's motion to dismiss be granted and the petition be dismissed for failure to state a cognizable claim. (ECF No. 11.) The findings and recommendations were served on the parties and contained notice that any objections thereto were to be filed within thirty days after service. (*Id.*) On January 26, 2023, Petitioner timely filed objections. (ECF No. 12.)

In his objections, Petitioner largely reiterates his arguments made in his opposition to Respondent's motion to dismiss. (*See* ECF Nos. 8, 12.) Petitioner argues that he should not be

¹ The findings and recommendations were signed on December 29, 2022, but not docketed until December 30, 2022.

1 placed on the Bureau of Prisons Inmate Financial Responsibility Program (“IFRP”) refusal status
2 and that his privileges should not be conditioned on Petitioner’s participation in the IFRP. (ECF
3 No. 12 at 1.) As mentioned in the findings and recommendations, Petitioner’s criminal judgment
4 specifically stated: “When incarcerated, payment of criminal monetary penalties are due during
5 imprisonment at the rate of *not less than* \$25 per quarter and payment shall be through the Bureau
6 of Prisons Inmate Financial Responsibility Program.” (ECF No. 1 at 19 (emphasis added).)
7 Petitioner must follow his criminal judgment, as there is no dispute that the sentencing court
8 properly set a restitution payment schedule. Therefore, the Court finds that Petitioner is not
9 entitled to habeas relief.

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
11 *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner’s
12 objections, the Court holds the findings and recommendations to be supported by the record and
13 proper analysis.

14 Accordingly:

- 15 1. The findings and recommendations issued on December 30, 2022, (ECF No. 11), are
16 adopted in full;
 - 17 2. Respondent’s motion to dismiss, (ECF No. 7), is granted;
 - 18 3. The petition for writ of habeas corpus is denied; and
 - 19 4. The Clerk of Court is directed to close the case.
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22 IT IS SO ORDERED.

23 Dated: May 30, 2023

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UNITED STATES DISTRICT JUDGE